

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TODD S. KAUFMAN  
a.k.a. TODD STEVEN KAUFMAN  
a.k.a. TODD S. KAUFMANN  
a.k.a. TODD STEVEN KAUFMANN,

Registered Nurse License No. 394568

Respondent.

Case No. 2012-401

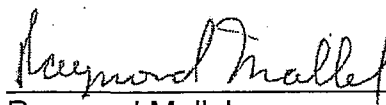
OAH No. 2012010551

ORDER DENYING RECONSIDERATION

The effective date of the decision in the above-entitled matter having heretofore been stayed through September 30, 2012, for the purpose of determining whether petitioner's request for reconsideration of said decision should be granted, and said request having now been considered and determination made that good cause for the granting of reconsideration has not been established, reconsideration of said Decision is hereby denied. The Board's Decision issued on August 21, 2012, becomes effective on September 28, 2012.

IT IS SO ORDERED this 28<sup>th</sup> day of September 2012.

BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



Raymond Mallel  
Board President

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TODD S. KAUFMAN  
a.k.a. TODD STEVEN KAUFMAN  
a.k.a. TODD S. KAUFMANN  
a.k.a. TODD STEVEN KAUFMANN  
P.O. Box 4443  
San Rafael, CA 94903

Registered Nurse License No. 394568

Respondent.

Case No. 2012-401

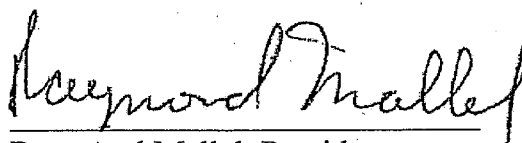
OAH No. 2012010551

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on September 20, 2012.

IT IS SO ORDERED this 21<sup>th</sup> day of August, 2012.



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TODD S. KAUFMAN  
a.k.a. TODD STEVEN KAUFMAN  
a.k.a. TODD S. KAUFMANN  
a.k.a. TODD STEVEN KAUFMANN,

Registered Nurse License No. 394568

Respondent.

Case No. 2012-401

OAH No. 2012010551

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on May 15-16, 2012, in Oakland, California.

Judith J. Loach, Deputy Attorney General, represented complainant, Louise R. Bailey, M.Ed., R.N.

Kathleen Morgan, Attorney at Law, represented respondent Todd S. Kaufman, who was present at the hearing.

The record was held open until May 28, 2012, to permit complainant to file a detailed cost certification, and respondent to file objections to the cost certification. The detailed cost certification was received on May 21, 2012, and marked as Exhibit 10 in evidence. No objection to the cost certification was received from respondent. The matter was deemed submitted on May 28, 2012.

**FACTUAL FINDINGS**

1. Complainant Louise R. Bailey, M.Ed., R.N., made the First Amended Accusation in her official capacity as Executive Officer of the Board of Registered Nursing (board), Department of Consumer Affairs.

2. On February 28, 1986, the board issued registered nurse license number 394568 to Todd Steven Kaufman (respondent), also known as Todd S. Kaufman, Todd Steven Kaufmann and Todd S. Kaufmann. The license was in full force and effect at all times pertinent to this matter. The license will expire on January 31, 2014, unless renewed.

3. Respondent is also licensed as a chiropractor. The Board of Chiropractic Examiners issued chiropractic license number DC 20654 to respondent on July 27, 1990. On at least six occasions between 1990 and 2012 respondent's chiropractic license went into forfeiture for failure to pay the renewal fee. Respondent's chiropractic license last went into forfeiture on March 12, 2011. The license was renewed on active status January 23, 2012.

4. The board seeks to revoke respondent's nursing license due to inappropriate patient contact that occurred while respondent was serving as a chiropractor, and for making false or misleading representations about his licensure status.

5. In November 2010, the Twin Cities Police Department in Larkspur, California was contacted by a therapist for one of respondent's former chiropractic patients. The therapist stated the patient wanted to report an incident involving respondent. Twin Cities Police Officer<sup>1</sup> Cheryl Paris met with the former patient, Patient W., on December 3, 2010. Patient W. told Paris that one evening in April 2001, at approximately 7:00 p.m., she called respondent's office seeking treatment for severe back pain. Respondent agreed to provide chiropractic services to Patient W. that same evening. Patient W. arrived at respondent's chiropractic office at about 7:30 p.m. Respondent was the only person in the office. Respondent asked Patient W. to disrobe and gave her a wrap to put on. The wrap was similar to a beach towel in that it was a large square of cloth that wrapped around the body leaving the shoulder area above the breasts bare. The wrap opened in the front and was secured by a Velcro fastener.

After Patient W. disrobed respondent asked her to lie down on her back on the adjustment table. At some point while Patient W. was lying on the adjustment table, respondent asked her if she wanted him to perform a breast massage. Patient W. did not respond. Patient W. told investigator Paris that she did not respond because she had never been to a chiropractor before and did not know if a breast massage was a regular part of a chiropractic exam. Respondent proceeded to use his thumb and index finger to rub and tug on the nipple of Patient W.'s right breast. Patient W. was shocked and afraid that if she objected respondent might rape her because no one else was present in the office. Respondent then began to make what sounded like sexual groaning noises to Patient W. while manipulating her breast. Patient W. told Officer Paris that when respondent asked her if she wanted him to turn off the lights, she jumped off the table and said she had to go. She quickly got dressed, paid for the session and left. She did not report the incident because she was ashamed and embarrassed. She suppressed her emotions but they surfaced several years later during therapy.

---

<sup>1</sup> Officer Paris had been promoted to detective by the time of the hearing.

6. After talking to Patient W., Officer Paris met with respondent and his attorney on January 27, 2011. Respondent told Paris he was a doctor of chiropractic, naturopathic physician, registered nurse, intuitive spiritual healer, and the clinical director of a cannabis facility. He also told Paris he provides hyperbaric oxygen therapy. At the time respondent was practicing out of his home in Terra Linda. Paris had respondent explain his chiropractic techniques. Respondent described various chiropractic adjustments and exams. He also stated that he always asks a patient if they are comfortable prior to each adjustment because sometimes patients recall traumatic events during treatment. In response to further questioning, respondent stated he never touched the breasts or genitals of female patients and he denied he had ever touched a patient's nipple.

Paris asked respondent about former patients who might accuse him of touching them inappropriately. Respondent recalled an Asian woman who had called his office late one evening and then had come in that same evening for a late appointment. Respondent recalled the patient had gotten his name out of the phone book (which was how Patient W. found respondent) and that she was experiencing a lot of back pain. When confronted about whether he had ever performed a breast massage,<sup>2</sup> respondent stated, "If it happened I am sorry, what ever it is, whatever happened." He denied touching any patient other than professionally and denied ever having a female patient topless in his office while he was treating them. Paris then confronted respondent about the inappropriate touching of Patient W. In response, respondent stated, "I could have made a mistake" and he then asked for a break to speak to his attorney.

After the break, respondent acknowledged to Paris that his hand "may" have moved across Patient W.'s breasts. Paris showed respondent a DMV photo of Patient W., and respondent confirmed they were speaking about the same person. Paris continued to question respondent about Patient W. and respondent admitted working on Patient W.'s breast. He stated, "I made a mistake," and that he wanted closure for himself and Patient W. He then stated "Admission of guilt. So, I did it."

Paris used a pen to draw an areola and a nipple on her right hand. She then asked respondent to demonstrate how he had touched Patient W.'s breast. Using the drawing on Paris' hand to demonstrate, respondent placed his two thumbs on the areola area. Respondent then pushed in toward the nipple and went around the entire nipple area; respondent touched the nipple area as he pushed his thumbs together. Respondent acknowledged he had worked on Patient W.'s bare, naked breast, and he stated, "I massaged her breast, I massaged her back, I massaged her shoulder. I manipulated the area. Wasn't sexually aroused, but I massaged the area." He also stated "I didn't intentionally do anything, meaning I didn't have a desire to sexily [sic] turn her on, turn myself on. Did I overstep the boundary of that? Yes. Was it my intention to do that? No."

---

<sup>2</sup> Breast massage was the term used by Officer Paris. Respondent initially referred to his manipulation of Patient W.'s breast as "deep tissue work" but eventually adopted the term breast massage during the course of the interview.

Respondent also admitted performing breast massages using the same technique on other patients, that it was not a normal chiropractic treatment and that the technique could be perceived by the patient as a sexual arousal act. Respondent claimed such massages were therapeutic. Upon further questioning, however, respondent admitted to Paris that most chiropractors would not agree that breast massages were therapeutic. Respondent also told Paris that he asked Patient W. if she wanted a breast massage, that she said yes and that the massage only lasted about 20 seconds.<sup>3</sup> Respondent maintained that the intent of the massage was not sexual but acknowledged it could have been perceived by Patient W. as a massage that was sexual in nature.

7. At hearing, respondent denied he touched Patient W.'s nipple, denied he manipulated the nipple, and denied ever inappropriately touching a female patient. He also maintained he never admitted any misconduct to Officer Paris. Respondent testified that he does not actually recall the specifics of his treatment of Patient W. and was only providing a description of the type of treatment he might have provided to a female patient with Patient W.'s symptoms. He claims that treatment would have consisted of deep tissue massage and pinching of the outer area of the breast but would not have involved touching the areola or the nipple. With respect to his "Admission of guilt. I did it," statement, respondent claims that he was not admitting he did anything wrong but was simply stating that he was willing to state he did a breast massage if it would give Patient W. closure.

8. In October 2011 and again in December 2011, Officer Paris checked respondent's LinkedIn profile online. Both profiles stated respondent was a C.N.P. (which are the initials commonly used to designate a certified nurse practitioner), an independent nurse practitioner and a naturopathic physician.

9. On October 25, 2011, Officer Paris contacted the Naturopathic Medicine Committee to verify respondent's status as a naturopathic physician. She was advised by the Executive Director of the committee that respondent was not and never had been a licensed naturopathic physician, and that respondent had been issued a citation and a fine of \$2,500 on July 12, 2011, for violation of Business and Professions Code sections 125.9, 148 and 3660 for the illegal use of the N.D. (naturopathic doctor) title.

10. Officer Paris also checked the California Department of Consumer Affairs website, which indicated it had last been updated on October 23, 2011, to verify the status of respondent's chiropractic license. The website stated respondent's license had expired on December 31, 2010, and was in forfeiture status because he had not paid his renewal fees. Paris called the Board of Chiropractic Examiners and verified that the information on the website was correct.

11. Investigator Paris additionally checked the California Department of Consumer Affairs website to verify the status of respondent's nursing license. The website

---

<sup>3</sup> Patient W. estimated the breast massage lasted 45 minutes.

indicated respondent's status was "active" as a registered nurse. Paris called the board of Registered Nursing and verified that the information was correct. The board told Paris that respondent does not have a certified nurse practitioner license.

12. Respondent claims that his use of the C.N.P., independent nurse practitioner and naturopathic physician titles resulted from his misunderstanding of those designations. Respondent explained that he received certification in traditional naturopathy (CTN certification) on April 4, 2007, from the American Naturopathic Certification Board after successfully completing an examination in Traditional Naturopathy. He then considered himself a certified naturopathic physician and therefore qualified to use the initials C.N.P. He claims he was unaware that the C.N.P. designation is normally used to refer to certified nurse practitioners or that his use of the naturopathic physician title was improper. Respondent states he changed his LinkedIn site and other business materials after he was notified his use was improper. It took a few months to eliminate the titles because he was relying on his web designer to make the changes. With respect to his statement on LinkedIn that he was an independent nurse practitioner, respondent explained that he was simply trying to indicate that he was an independent, self-employed nurse and not affiliated with a hospital. He denies any intent to deceive.

With respect to practicing while his license was in forfeiture, respondent stated that he was not aware his license was in forfeiture status. He forgot to notify the board when he changed office locations and the renewal notice was sent to his old address. Respondent never received the renewal notice and he simply forgot his license was due for renewal. When he learned his license had lapsed he paid the \$500 required to reinstate his license and the license is now in active status.

13. Respondent's testimony was not entirely credible. His claim that he was not aware that C.N.P. was commonly used to refer to certified nurse practitioners is difficult to believe since he has been a registered nurse in California since 1986. And his asserted belief that he was entitled to call himself a naturopathic physician because he received certification in traditional naturopathy is also difficult to accept. The inconsistencies between respondent's statements to Officer Paris and his testimony at hearing also undercut his credibility. During his interview with Officer Paris, respondent initially denied touching any female patient's breast, but later admitted doing "deep tissue work" or a "breast massage" on Patient W.'s bare breast. However, at hearing he again denied touching the nipple area of Patient W.'s breast and attempted, unconvincingly, to explain away the admission of guilt made to Officer Paris. The inconsistencies and implausible explanations contained in respondent's testimony render that testimony unreliable.

14. Respondent is a 55-year-old, single male. He is self-employed as a chiropractor and registered nurse, operating out of his home in Corte Madera, California. Respondent earned his Associate degree in nursing in June 1981 from Kingsborough Community College in Brooklyn, New York. He practiced as a registered nurse in New York from 1981 to 1985, before relocating to California to attend chiropractic school. Respondent obtained his chiropractic license in 1990. He continued to work as a registered

nurse while he built his chiropractic practice. Respondent stopped practicing nursing in approximately 1996, and put his nursing license on inactive status. He now wishes to return to nursing. Prior to the subject proceeding, no formal disciplinary action had ever been taken by the board against respondent.

15. Several individuals testified on respondent's behalf at hearing. Maro Asmar is respondent's former patient, girlfriend and employee. Asmar received chiropractic treatment from respondent for about five years before they began dating in 2000. They dated from 2000 to 2004, and remained friends after their dating relationship ended. Asmar worked part-time as respondent's receptionist from 2004 to 2007. When Asmar received chiropractic treatment from respondent he was always very respectful of her wishes. She typically wore her street clothes or a hospital type gown during treatment. Respondent never touched her nipple area during treatment. When Asmar worked as respondent's receptionist he was always very respectful of his patients. He would give those with financial difficulties a break and would sometimes stay late to provide treatment. Asmar never knew respondent to represent himself as a certified nurse practitioner or a naturopathic physician.

Respondent has been Michael Peterson's chiropractor for approximately eight years. Peterson has found respondent to be an excellent chiropractor and has referred others to respondent. Peterson described respondent as a caring, knowledgeable and creative chiropractor. He testified that respondent asks permission before working on him and that respondent often mumbles to himself as he works. Peterson acknowledged that respondent's self-talk could be somewhat disconcerting to patients. Peterson typically wore his street clothes during chiropractic adjustments but would occasionally remove his shirt for laser, heat or ice therapy.

16. Respondent also submitted letters of support from Catherine Bell, M.D., and Dean A. Kness, D.C., C.C.E.P. Bell is a Staff Anesthesiologist at Kaiser, San Francisco. In her letter dated May 7, 2012, Bell states that respondent has been her chiropractor for 11 years and treats her from injuries resulting from auto accidents and sports injuries. He has been successful in providing pain relief in her neck, and thoracic and lumbar spine and improved mobility in her wrists, knees hips and ankles when other doctors have not been able to do so. She has referred family and friends to respondent.

In a letter dated May 9, 2012, Kness states he and respondent have been colleagues and friends for 26 years. He has always found respondent to be a competent and skilled practitioner who made the health of his clients his top priority. Kness characterizes respondent as "an excellent and respected practitioner as a chiropractor and hyperbaric therapist."

17. Pursuant to Business and Professions Code section 125.3, the Board may request that "a licentiate found to have committed a violation or violations of the licensing act [be required] to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."



The Board certifies that the following costs were incurred in connection with the investigation and prosecution of this Accusation as of May 11, 2012:

Deputy Attorney General:  
2011-2012 58.50 hours @ \$170/hour \$9,945.00

Paralegal:  
2011-2012 2 hours @ \$120/hour 240.00

Transcript: 1,119.55

TOTAL COSTS INCURRED: \$11,304.55

18. Respondent did not object to the costs.

### LEGAL CONCLUSIONS

1. Citing *Ramona v. Superior Court* (1997) 57 Cal.App 4th 107, and *Franklin Duncan* 884 F.2d 1435 (N.D. Cal. 1995), respondent argues that all information provided by Patient W. to Officer Paris should be excluded because the courts have held that repressed memories are not reliable evidence. In *Ramona* a daughter sought to testify of childhood sexual abuse by her father based on repressed memories recalled only after commencing psychotherapy and undergoing a sodium amytal interview. The court held that the lack of general acceptance in the scientific community of the reliability of repressed memories recalled only after commencing psychotherapy and undergoing a sodium amytal interview barred the testimony.

In *Franklin* the court held that the defendant's due process rights were violated where he was precluded from introducing evidence to show that the only eyewitness to the crime who testified against him, and whose testimony was based on recovered memory, could have been exposed to the details of the crime from newspaper articles.

Neither *Romona* nor *Franklin* requires exclusion of Patient W.'s statement in this matter. This case involves suppressed emotions (i.e., Patient W. elected not to pursue the matter) not repressed memories that were recovered or recalled only through psychotherapy and undergoing a sodium amytal interview. And respondent was not precluded from producing evidence at hearing to refute evidence offered by complainant. Respondent's argument that Patient W.'s statement should be excluded is therefore rejected.

2. Cause for disciplinary action against respondent exists under Business and Professions Code sections 2761, subdivision (a) and 726, and California Code of Regulations, title 16, section 1444, on the ground of unprofessional conduct in that respondent committed an act of sexual misconduct with a patient, as set forth in Findings 5 and 6.

3. Cause for disciplinary action against respondent exists under Business and Professions Code sections 2761, subdivisions (a)(3) and (j), 17500, and 651, and pursuant to California Code of Regulations, title 16, section 1444, subdivision (c), on the ground of unprofessional conduct, in that respondent represented on the Internet that he was a C.N.P. and independent nurse practitioner when he has never been licensed and/or certified as a nurse practitioner in California, as set forth in Findings 8 and 11.

4. Cause for disciplinary action against respondent exists under Business and Professions Code sections 2761, subdivision (h), 17500, and 651, and pursuant to California Code of Regulations, title 16, section 1444, subdivision (c), on the ground of unprofessional conduct, in that in 2011 respondent represented on the Internet that he was an actively licensed chiropractor and a Certified Naturopathic Physician, when in fact his chiropractic license was in forfeiture status and he has never been licensed as a naturopathic physician in California, as set forth in Findings 3, 8 and 10.

5. This case involves inappropriate sexual contact with a patient by respondent and misrepresentation by respondent regarding his licensure as a nurse and a naturopathic practitioner. Although respondent admitted his sexual misconduct in the past, he now attempts to explain away those admissions and denies any misconduct. It is clear from respondent's testimony that he has not accepted responsibility for his actions, which raises the concern that he might engage in inappropriate conduct in the future if given the opportunity. Respondent's less than credible claim that he did not understand the C.N.P., independent nurse practitioner and naturopathic physician designations also raises concerns about respondent's honesty and his ability to practice in an honest and ethical manner. After considering all of the evidence, it is determined that protection of the public requires revocation of respondent's nursing license.

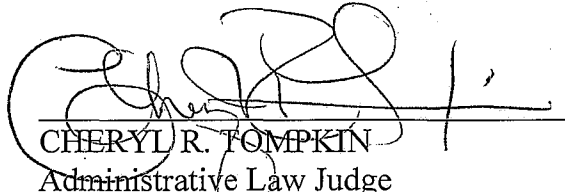
6. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." That section also provides that the Board's certification of the actual costs constitutes prima facie evidence of the reasonable costs. The costs set forth in Finding 13 were established by such a certification. The reasonable costs of investigation and enforcement are therefore determined to be \$11,304.55. Respondent has not objected to the costs or provided any basis for reduction of those costs. (See *Zuckerman v. Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32.)

### ORDER

1. Registered nurse license number 394568 issued to Todd Steven Kaufman is revoked.

2. Respondent shall pay to the board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$11,304.55. Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

Dated: July 5, 2012



CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUDITH J. LOACH  
Deputy Attorney General  
4 State Bar No. 162030  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5604  
6 Facsimile: (415) 703-5480  
E-mail: Judith.Loach@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-401

13 **TODD S. KAUFMAN**  
14 **AKA TODD STEVEN KAUFMAN**  
15 **AKA TODD S. KAUFMANN**  
16 **AKA TODD STEVEN KAUFMANN**  
17 **340 Channing Way, Apt. 147**  
18 **San Rafael, CA 94903**  
19 **Registered Nurse License No. 394568**

**FIRST AMENDED ACCUSATION**

Respondent.

20 Complainant alleges:

PARTIES

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this First Amended Accusation  
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
23 Department of Consumer Affairs.

24 2. On or about February 28, 1986, the Board of Registered Nursing issued Registered  
25 Nurse License Number 394568 to Todd S. Kaufman, aka Todd Steven Kaufman, aka Todd S.  
26 Kaufmann, aka Todd Steven Kaufmann ("Respondent"). The Registered Nurse License was in  
27 full force and effect at all times relevant to the charges brought herein and will expire on January  
28 31, 2014, unless renewed.

JURISDICTION

3. This First Amended Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

RELEVANT DISCIPLINARY STATUTES AND REGULATIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(3) The use of advertising relating to nursing which violates Section 17500.

...

"(h) Impersonating another certified or licensed practitioner . . . .

...

"(j) Holding oneself out to the public or to any practitioner of the healing arts as a 'nurse practitioner' or as meeting the standards established by the board for a nurse practitioner unless meeting the standards established by the board pursuant to Article 8 (commencing with Section 2834) . . . ."

...

7. Section 17500 of the Code states, in pertinent part:

"It is unlawful for any person, firm, corporation or association, or any employee thereof

1 with intent directly or indirectly to dispose of real or personal property or to perform services,  
2 professional or otherwise, or anything of any nature whatsoever or to induce the public to enter  
3 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated  
4 before the public in this state, or to make or disseminate or cause to be made or disseminated  
5 from this state before the public in any state, in any newspaper or other publication, or any  
6 advertising device, or by public outcry or proclamation, or in any other manner or means  
7 whatever, including over the Internet, any statement, concerning that real or personal property or  
8 those services, professional or otherwise, or concerning any circumstance or matter of fact  
9 connected with the proposed performance or disposition thereof, which is untrue or misleading,  
10 and which is known, or which by the exercise of reasonable care should be known, to be untrue or  
11 misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so  
12 made or disseminated any such statement as part of a plan or scheme with the intent not to sell  
13 that personal property or those services, professional or otherwise, so advertised at the price  
14 stated therein, or as so advertised. Any violation of the provisions of this section is a  
15 misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a  
16 fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and  
17 fine.”

18 8. Section 651 of the Code states, in pertinent part:

19 “(a) It is unlawful for any person licensed under this division or under any initiative act  
20 referred to in this division to disseminate or cause to be disseminated any form of public  
21 communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image  
22 for the purpose of or likely to induce, directly or indirectly, the rendering of professional services  
23 or furnishing of products in connection with the professional practice or business for which he or  
24 she is licensed. A “public communication” as used in this section includes, but is not limited to,  
25 communication by means of mail, television, radio, motion picture, newspaper, book, list or  
26 directory of healing arts practitioners, Internet, or other electronic communication.

27 (b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a  
28 statement or claim that does any of the following:

1 (1) Contains a misrepresentation of fact.

2 (2) Is likely to mislead or deceive because of a failure to disclose material facts.

3 (3)(A) Is intended or is likely to create false or unjustified expectations of favorable results,  
4 including the use of any photograph or other image that does not accurately depict the results of  
5 the procedure being advertised or that has been altered in any manner from the image of the  
6 actual subject depicted in the photograph or image.

7 ...

8 (5) Contains other representations or implications that in reasonable probability will cause  
9 an ordinarily prudent person to misunderstand or be deceived.

10 ...

11 (8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive  
12 because of a failure to disclose material facts.

13 ...

14 (f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide  
15 mistake of fact shall be a defense to this subdivision, but only to this subdivision.

16 (g) Any violation of this section by a person so licensed shall constitute good cause for  
17 revocation or suspension of his or her license or other disciplinary action."

18 ...

19 9. Section 726 of the Code provides:

20 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client  
21 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person  
22 licensed under this division, under any initiative act referred to in this division and under Chapter  
23 17 (commencing with Section 9000) of Division 3."

24 ...

25 10. Title 16 of the California Code of Regulations, section 1444 provides:

26 "A conviction or act shall be considered substantially related to the qualifications, functions  
27 or duties of a registered nurse, if to a substantial degree it evidences the present or potential  
28

unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code section 11160.

...

“(c) Theft, dishonesty, fraud, or deceit.”

...

#### COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### FIRST CAUSE FOR DISCIPLINE

##### (Unprofessional Conduct – Inappropriate Patient Contact)

12. Respondent is subject to discipline for unprofessional conduct pursuant to Code sections 2761, subdivision (a), 726 and California Code of Regulations section 1444, in that while practicing as a licensed chiropractor in April 2001, he had inappropriate physical contact with a patient under his care. The circumstances are as follows:

a. In April 2001, Patient W. sought chiropractic treatment from Respondent. She arrived at Respondent's office in Corte Madera and was given a Velcro wrap-around cloth towel to wear after she disrobed.

b. Patient W. reported that Respondent performed a “breast massage” whereby he rubbed and pulled on her right nipple with his fingers.

c. Respondent was interviewed by the Twin Cities Police Authority in Larkspur on or about January 27, 2011. He admitted to having performed a “breast massage” on Patient W., using his thumbs to touch her areola and manipulate the breast area.

///

///





PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1.1. Revoking or suspending Registered Nurse License Number 394568, issued to Todd S. Kaufman, aka Todd Steven Kaufman, aka Todd S. Kaufmann, aka Todd Steven Kaufmann;

1.2. Ordering Todd S. Kaufman, aka Todd Steven Kaufman, aka Todd S. Kaufmann, aka Todd Steven Kaufmann, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: May 10, 2012

*for* *Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SF2011203799